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Suits against Foreign Corporations as a Burden on Interstate Commerce

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SUITS AGAINST FOREIGN CORPORATIONS AS A BURDEN ON INTERSTATE COMMERCE

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IN a previous article[1] the limitations placed upon jurisdiction over foreign corporations by the due process clause of the constitution have been discussed. The doctrine of denying jurisdiction where the cause of action is foreign, as being a burden on interstate commerce, is distinct from the problem of when jurisdiction may be assumed so as to be compatible with due process. The former is concerned, not with the due process clause of the constitution, but with the commerce clause of that document. In the subsequent discussion it is assumed that the defendant foreign corporation is within the jurisdiction of the court so as to be compatible with due process and that the only question involved is whether or not the exercise of that jurisdiction would conflict with the commerce clause of the constitution. There is considerable confusion as to whether the question involved is one of jurisdiction or venue,[2] but for the present, regardless of which it is, our problem is when will the court dismiss the case for this reason and why.

On this point there have been six Supreme Court decisions representing five different situations. The first of these decisions was the case of *Davis v. Farmers' Coop. Equity Co.*[3] This was an action by a Kansas corporation in a court of Minnesota for

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[1]See Jurisdiction Over Foreign Corporations, in (1933) 17 MINNESOTA LAW REVIEW 270.

[2]Mr. Foster in his article entitled, The Place of Trial in Civil Actions, (1930) 43 Harv. L. Rev. 1217, 1234 aptly expresses this confusion as follows: "Clearly the objection has nothing to do with the physical power concept of jurisdiction . . . . One might conclude that it is not an objection to jurisdiction at all, but merely a constitutional requirement of a procedural nature. . . . A stumbling block to this hypothesis is that in Atchison, Topeka & Santa Fe Ry. Co. v. Wells a default judgment was set aside as void because of the violation of the commerce clause. From this the orthodox could deduce only that the defect was jurisdictional. Perhaps a council of legal prelates of learning and dignity comparable to the council assembled to deal with the classic controversy between homoiousians and homoousians could redefine the existing concepts so as to make a place for the new born doctrine. Meanwhile the only way to gloss over its somewhat monstrous character is to dignify it with the appellation sui generis."

[3](1923) 262 U. S. 312, 43 Sup. Ct. 556, 67 L. Ed. 996.

recovery for loss of grain shipped under a bill of lading issued by the carrier in Kansas for transportation over its line from one point in that state to another. The transaction was in no way connected with Minnesota. The carrier did not own or operate any railroad in Minnesota, but it maintained there an agent for solicitation of traffic. A Minnesota statute permitted service of process upon an agent maintained in the state by a foreign railroad to solicit business for transportation over its lines in other states, in suits which might arise out of transactions in other states, in favor of non-residents of the state. The statute was held invalid as a violation of the commerce clause of the constitution, the court saying:

"That the claims against interstate carriers for personal injuries and for loss and damage of freight are numerous; and that the amounts demanded are large; that in many cases carriers deem it imperative or advisable to leave the determination of their liability to the courts; that litigation in states and jurisdictions remote from that in which the cause of action arose entails absence of employes from their customary occupations; and that this impairs efficiency in operation, and causes directly and indirectly, heavy expense to the carriers . . . these are matters of common knowledge."

In a note appended to the case it appeared at that time, from a message of the governor of Minnesota to its legislature, that there were then pending 1,028 personal injury cases in which non-resident plaintiffs sought damages aggregating nearly $26,000,000 from foreign railroad corporations which did not operate any lines within Minnesota.

It should be noted here that in this case: 1. the cause of action did not arise in Minnesota; 2. the carrier neither owns nor operates a railroad in the state; and 3. the plaintiff is not a resident of the state. Upon such facts the holding is that there is an unreasonable burden on interstate commerce.

The second Supreme Court decision was the case of *Atchison, T. & S. F. R. Co. v. Wells*[4] in which Wells, a resident of Colorado, was injured in New Mexico while employed by the railway company. He sued in Texas without personal service and attached the rolling stock in the hands of a Texas railroad. The judgment was for the plaintiff, and this is a suit to enjoin enforcement of that judgment. The Santa Fe Railroad was not doing business in Texas. On the basis of the *Davis Case* the court held that such a

[4](1924) 265 U. S. 101, 44 Sup. Ct. 469, 68 L. Ed. 928.

suit necessarily and unreasonably burdens interstate commerce. It should be noted that the same three facts as appear in the previous case appear here.

In *Missouri ex. Rel. St. Louis, B. & M. R. Co. v. Taylor*[5] the plaintiff, a foreign corporation doing business in Missouri, sued a Texas corporation not doing business in Missouri on a cause of action arising out of a shipment of goods deliverable in Missouri. There was no personal service but only garnishment of traffic balances due from a connecting interstate carrier having a place of business in Missouri,[6] and for aught that appears, the negligence complained of occurred within Missouri. The court held the garnishment did not unreasonably burden interstate commerce. Thus here is a suit: 1. by a resident of the state, 2. against a carrier which neither owns nor operates a railroad in the state, 3. on a cause of action which arose, or is assumed to have arisen within the state. On such facts there is no unreasonable burden on interstate commerce, according to the holding in this case.

The fourth Supreme Court case was the recent decision in *Hoffman v. Missouri ex. Rel. Foraker.*[7] This was a suit under the federal employers' liability act, by a resident of Kansas upon a death which occurred in Kansas, against a Missouri railroad in Missouri. This was held not to be an unreasonable burden on interstate commerce. Here is a suit: 1. by a non-resident, 2. upon a cause of action which did not arise in the state, 3. against a railroad which both owns and operates a railroad in the state. There is no unreasonable burden on interstate commerce on these facts. It should be noted here that this case is outside the present discussion since it deals with a domestic corporation while our problem is concerned with foreign corporations. But it is set out here for purposes of comparison to be noted subsequently.

The next Supreme Court case was the case of *Michigan Central*

[5](1924) 266 U. S. 200, 45 Sup. Ct. 47, 69 L. Ed. 247.

[6]It will be noted in various of these cases that the corporation is being sued without the presence of the jurisdictional fact of doing business. Many of these cases are like this case of Missouri ex rel St. Louis B. & M. Ry. v. Taylor, (1924) 266 U. S. 200, 45 Sup. Ct. 47, 69 L. Ed. 247, in that the proceeding is one in attachment or garnishment, and thus since a personal judgment is not sought, doing business is not a jurisdictional fact. In other cases even though a personal judgment is sought and the foreign corporation is not doing business in the state where sued, the defendant does not rely upon the lack of jurisdiction in this respect but objects on the basis of the commerce clause. This does not necessarily mean that an objection under the due process clause could not have been made also. The two grounds of objection are entirely separate, and care should be taken not to confuse them.

[7](1927) 274 U. S. 21, 47 Sup. Ct. 485, 71 L. Ed. 905.

Railroad Co. v. Mix.[8] This was also an action based on the federal employers' liability act, against a Michigan corporation in Missouri. No part of the railroad's lines run into Missouri, and it was not doing business there but only soliciting business. The cause of action accrued in Michigan and the plaintiff at that time was a resident of Michigan, but after the cause of action accrued and before suit was brought she removed to Missouri and became a resident of that state. This suit was held to be an unreasonable burden on interstate commerce, the court saying:

"The mere fact that she had acquired a residence within Missouri before commencing the action does not make reasonable the imposition upon interstate commerce of the heavy burden which would be entailed in trying the cause in a state remote from that in which the accident occurred and in which both parties resided at the time."

The court further remarked that the plaintiff may have moved to Missouri for the express purpose of bringing suit there and taking advantage of the liberal attitude of the Missouri courts. There was, however, nothing to indicate that this was the reason for the plaintiff's removal from Michigan, and in the absence of some showing it cannot be presumed. Thus here we have a suit: 1. against a railroad which neither owns nor operates a railroad in the state, 2. on a cause of action which arose outside the state, 3. by a plaintiff who became a resident of the state after the cause of action accrued. Upon these facts it is held that there is an unreasonable burden on interstate commerce.

The case of *Denver and R. G. W. R. Co. v. Terte*[9] reaffirms the decision in the *Michigan Central Case* and adds another situation. In this case Curtis sought damages under the federal employers' liability act, for a personal injury in Colorado, alleged to have occurred through the joint negligence of the Santa Fe and the Rio Grande Railroads. The action was brought in Missouri to which state Curtis had removed and become a bona fide resident and citizen after being injured in Colorado. The Rio Grande railroad is a Delaware corporation which neither owns nor operates any line in Missouri and is not licensed to do business in that state, though it does maintain an agent for the solicitation of traffic. The Santa Fe Railroad is a Kansas corporation and owns and operates railroad lines in Missouri and other states. It is licensed to do business in Missouri. Summonses

[8](1929) 278 U. S. 492, 49 Sup. Ct. 207, 73 L. Ed. 470.
[9](1932) 284 U. S. 284, 52 Sup. St. 152, 76 L. Ed. 295.

were served on agents of both defendants in Missouri, and a writ of attachment against the Rio Grande was served upon several railroad companies alleged to be indebted to it. The present action is an application by the Rio Grande Railroad for a writ of prohibition to restrain Ben Terte, Judge of the circuit court of Jackson County, Missouri, from entertaining jurisdiction of the action brought by Curtis.

The Supreme Court held that the Santa Fe railroad was properly sued in Jackson county, but that the Rio Grande railroad was not suable there upon this cause of action.

As to the Santa Fe railroad this suit is 1. against a railroad doing business in the state, 2. on a cause of action which arose outside the state, 3. by a plaintiff who became a resident of the state after the cause of action arose. Upon these facts there is no burden on interstate commerce. As to the Rio Grande railroad we have a suit, 1. against a railroad not doing business in the state, 2. on a cause of action which arose outside the state, 3. by a plaintiff who became a resident of the state after the cause of action arose. The decision is that such a suit constitutes an unreasonable burden on interstate commerce.

It should be noted that the federal employers' liability act[10] provides that

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states, etc., etc."

Thus the cases of *Hoffman v. Missouri ex Rel. Foraker*[11] and *Michigan Central Railroad Co. v. Mix*,[12] might have been based on this statute. In the *Hoffman Case* the defendant was doing business in Missouri so that according to the above statute the action could have been brought in Missouri. Such was the holding in the case, but not the reasoning. So also in the *Michigan Central Case* the defendant did not "reside" in Missouri, nor was the defendant "doing business" in that state. The statute does not authorize a suit under such circumstances, and the holding in the case was that the suit could not be maintained. The same ob-

[10]April 5, 1910, ch. 143, sec. 1, 39 Stat. at L. 291.

[11](1927) 274 U. S. 21, 47 Sup. Ct. 485, 71 L. Ed. 905.

[12](1929) 278 U. S. 492, 49 Sup. Ct. 207, 73 L. Ed. 470.

servations can be made regarding the *Rio Grande Case*. However, the court did not mention this section nor rest its decision upon any such reason. The entire basis of the decision in each case was the burden on interstate commerce. Consequently, it is from this angle that the problem is herein approached.

Having set out the Supreme Court decisions it will be seen that apparently there are three important facts which seem to control the decisions: where the cause of action arose, the residence of the plaintiff, and whether the defendant is operating in the state where sued. On this basis there are eight principal situations which might arise, namely,

1. Where the plaintiff is a non-resident suing a foreign corporation operating in the state on a cause of action which accrued outside the state.

2. Where the plaintiff is a non-resident suing a foreign corporation operating in the state on a cause of action which accrued within the state.

3. Where the plaintiff is a non-resident suing a foreign corporation not operating in the state on a cause of action which arose outside the state.

4. Where the plaintiff is a non-resident suing a foreign corporation not operating in the state on a cause of action which arose within the state.

5. Where the plaintiff is a resident suing a foreign corporation operating in the state on a cause of action arising outside the state.

6. Where the plaintiff is a resident suing a foreign corporation operating in the state on a cause of action arising within the state.

7. Where the plaintiff is a resident suing a foreign corporation not operating in the state on a cause of action which arose outside the state.

8. Where the plaintiff is a resident suing a foreign corporation not operating in the state on a cause of action which arose within the state.

In addition to these situations we have the variations suggested by the *Mix* and *Terte* cases. That is, the question as to whether the residence was acquired before or after the cause of action arose. Whether or not this factor is controlling will be taken up subsequently, and in the above classification it is assumed that the

plaintiff has not changed his residence since the cause of action accrued.

Referring to the principal classifications, cases 3 and 8 have apparently been decided by the United States Supreme Court. The *Davis Case* and the *Wells Case* decide situation No. 3 is an unreasonable burden, while the *Taylor Case* decides that situation No. 8 is not an unreasonable burden on interstate commerce. This leaves situations No. 1, 2, 4, 5, 6 and 7 open.

Situation No. 6, is, of course, the clearest and the easiest. Here everything is within the state and consequently under no theory could such an action be termed an unreasonable burden on interstate commerce.

There being no United States Supreme Court decisions directly upon the other situations, our attention is turned to the lower federal and state decisions for possible solutions of them. A number of cases[13] represent our first situation where the plaintiff is a non-resident suing a foreign corporation operating in the state on a cause of action which arose outside the state. The decision in all but two of these cases is to the effect that there is no unreasonable burden on interstate commerce.

These two cases[14] went on the assumption that the cases were controlled by the *Davis Case,* overlooking and not pointing out the difference in facts and merely deciding without discussion that the situation was an unreasonable burden on interstate commerce. In consequence these two cases cannot be said to be of decisive force. So, for the present, at least, we may assume that situation No. 1, is to be decided to the effect that it is no unreasonable burden on interstate commerce. At least such is the indication of the lower federal and state decisions.

[13]O'Brien v. So. Bell Telephone Co., (D.C. Ala. 1923) 292 Fed. 379; Harris v. American Ry. Express Co., (C.C.A. D. of C. 1926) 12 F. (2d) 487; Panstwowe Zaklady Graviozne v. Auto Ins. Co., (D.C. N.Y. 1928) 36 F. (2d) 504; Erving v. Chicago N. W. Ry. Co., (1927) 171 Minn. 87, 214 N. W. 12; Kobbe v. Chicago N. W. Ry. Co., (1927) 173 Minn. 79, 216 N. W. 543; Gegere v. Chicago N. W. Ry. Co., (1928) 175 Minn. 96, 220 N. W. 429; Iron City Produce Co. v. American Express Co., (1926) 22 Ohio App. 165, 153 N. E. 316; N. V. Brood En Beschuitfabriek v. Aluminum Co. of America, (1930) 136 Misc. Rep. 349, 239 N. Y. S. 702; Murnan v. Wabash Ry. Co., (1927) 220 App. Div. 218, 221 N. Y. S. 332; Boright v. Chicago R. I. & P. Co., (1930) 180 Minn. 52, 230 N. W. 457; Witort v. Chicago N. W. Ry. Co., (1929) 178 Minn. 261, 226 N. W. 934; and Windus v. Ill. Central R. Co., (1929) 177 Minn. 1, 223 N. W. 291.

[14]Iron City Produce Co. v. American Express Co., (1926) 22 Ohio App. 165, 153 N. E. 316; Panstwowe Zaklady Graviozne v. Auto Ins. Co, (D.C. N.Y. 1928) 36 F. (2d) 504.

The case of *Louisville & Nashville R. Co. v. Deutsche Dampfschiffarts Gesellschaft*[15] is in accord with the *Davis Case* holding that where the plaintiff is a non-resident, subjecting a foreign corporation not operating in the state to suit on a cause of action arising outside the state constituted an unreasonable burden on interstate commerce.

The case of *American Ry. Express Co. v. Rouw Co.*[16] is a suit by a resident against a foreign corporation doing business in the state, on a cause of action arising outside the state. This represents situation No. 5, and the decision is that there is no unreasonable burden on interstate commerce.

The case of *Griffin v. Seaboard Air Line Ry. Co.*[17] represents situation No. 7, in which a resident plaintiff is suing a foreign corporation not operating in the state on a cause of action which arose outside the state. The decision was to the effect that there was no unreasonable burden on interstate commerce.

The case of *Maverick Mills v. Davis*[18] was a situation like that in the *Taylor Case* and, though decided a year previous to the *Taylor Case,* was decided in accordance with the view therein expressed, i. e., a suit by a resident against a foreign corporation not doing business in the state on a cause of action arising within the state was not an unreasonable burden on interstate commerce.

There are no cases deciding situation No. 2, but the only difference between situation No. 1 and situation No. 2 is that in the former the cause of action arose outside the state while in the latter it arose within the state. Therefore, since in situation No. 1 the state decisions indicate that there was no unreasonable burden on interstate commerce, the same should be true of situation No. 2, since the fact that the cause of action arose within the state furnishes all the more reason why the situation is not an unreasonable burden on interstate commerce.

Situation No. 4 is perhaps a little difficult to imagine, and probably the only case where such a situation could arise would be in a case similar to the *Taylor Case,* for the only difference between situation No. 4 and the *Taylor Case* is the fact that in the latter the suit is by a resident while in the former the suit is by a non-resident. Since the fact that the plaintiff is a non-resident may

[15](D.C. Ala. 1930) 43 F. (2d) 651.
[16](1927) 173 Ark. 810, 294 S. W. 401.
[17](D.C. Mo. 1928) 28 F. (2d) 998.
[18](D.C. Mass. 1923) 294 Fed. 404.

furnish a reason for saying there would be an unreasonable burden on interstate commerce, an analogy to the *Taylor Case* will not be a satisfactory solution to situation No. 4 unless it is established that the residence of the plaintiff is or is not a controlling factor. Consequently situation No. 4 will be left for subsequent consideration.

Situation No. 5 also can be decided by analogy to situation No. 1, since the only difference between the two is that in situation No. 1 the plaintiff is a non-resident while in situation No. 5 the plaintiff is a resident. Consequently, even assuming that the residence of the plaintiff is a controlling factor, there is all the more reason for saying situation No. 5 constitutes no unreasonable burden on interstate commerce since in situation No. 1 the plaintiff was a non-resident and it was decided to be no unreasonable burden on interstate commerce.

Situation No. 3 is identical with situation No. 7 except as to the residence of the plaintiff and in the *Davis Case* was decided contrary to the decision in *Griffin v. Seaboard Air Line Railway Co.*[19]

So this leaves remaining the problem noted in situation No. 4 as to whether the residence of the plaintiff is a controlling factor. This might apparently be decided by reference to the conclusions reached in the various situations. Thus: situation No. 1 and situation No. 5 are decided the same, i. e., not an unreasonable burden, and yet the only difference is that in one the plaintiff is a non-resident and in the other he is a resident. The same is true of situation No. 2 and No. 6, the only difference being the residence of the plaintiff, and yet the conclusion is that neither is an unreasonable burden on interstate commerce. On the basis of these observations it would seem that according to these holdings the residence of the plaintiff in itself is immaterial as to the question of burden on interstate commerce, in spite of the intimations to the contrary. Therefore, if it is assumed (the correctness of the assumption will be discussed later) that the residence of the plaintiff is not a controlling factor, we may decide situation No. 4 by analogy. The facts in the *Taylor Case* are identical with situation No. 4 except that in the former the plaintiff was a resident, and thus since it is concluded that the residence of the plaintiff is not a controlling factor it may be further concluded that situation No.

[19](D.C. Mo. 1928) 28 F. (2d) 998.

4 should be decided the same way as the *Taylor Case,* i. e., it is not an unreasonable burden on interstate commerce.

So also situation No. 7 could be said to have the same conclusion as situation No. 3, i. e., an unreasonable burden since they are exactly the same except as to the residence of the plaintiff.

Summarizing the conclusions upon the foregoing reasoning it may be noted:

Plaintiff	Cause of Action Arose	Defendant's Relation With State	Decision
1. Non-resident	Outside the state	Operating in	No burden
2. Non-resident	Inside the state	Operating in	No burden
3. Non-resident	Outside the state	Not operating in	Burden
4. Non-resident	Inside the state	Not operating in	No burden
5. Resident	Outside the state	Operating in	No burden
6. Resident	Inside the state	Operating in	No burden
7. Resident	Outside the state	Not operating in	Burden
8. Resident	Inside the state	Not operating in	No burden

So far there seems to be no difficulty, and it will be noted that these conclusions are in harmony with the cases cited except as to situation No. 7,[20] but it remains to be seen whether or not these conclusions have been predicated upon false assumptions. Having decided when jurisdiction has been taken in the federal and state courts and to what lengths such decisions lead, the remaining problem is to formulate "a philosophy that will mediate between the conflicting claims of stability and progress, and supply a principle of growth."[21]

First of all it must be pointed out that there is no magic in the commerce clause of the United States constitution, no matter how inspired that document may be considered. The commerce clause as used in connection with this problem is nothing more than a device used in determining the place of trial in civil actions such as these under consideration.[22] Consequently, once it is decided to employ this device, little remains to be done except to explain the cases in the light of this assumption.

[20]See Griffin v. Seaboard Air Line Ry Co., (D.C. Mo. 1928) 28 F. (2d) 998.

[21]Cardozo, The Growth of the Law 1.

[22]See Foster, The Place of Trial in Civil Actions, (1930) 43 Harv. L. Rev. 1217.

Thus once it is assumed that the commerce clause is to be used in this particular type of case to control the place of trial, the result seems quite simple and is not wholly unconvincing. From this point of view the problem lies in the assumption and not in the results of that assumption. The problem is brought about by the disinclination of the courts, or at least some courts, to assert and exercise any discretionary power to dismiss an action whenever it appears that some other forum would better meet the ends of justice.[23]

There are at least four different methods of controlling the place of trial. The oldest method is the distinction between local and transitory causes of action. In the leading case in the United States, *Livingston v. Jefferson*,[24] Chief Justice Marshal explains the origin of the rule and follows it somewhat reluctantly. The supreme court of Minnesota apparently has been the only court bold enough to discard openly this means of control.[25] This method is obviously inadequate to solve the existing problem inasmuch as practically all the cases under consideration involve transitory causes of action.

The second method is the injunction.[26] The objection to this method, however, is that the effectiveness of the decree enjoining the prosecution of the suit in a foreign jurisdiction depends entirely upon the foreign jurisdiction, and generally the foreign jurisdiction does not recognize it.[27]

Third, there is the plea "forum non conveniens" or a discretionary power on the part of the court to refuse to hear causes of action which might be tried more conveniently in another forum.[28] This method, however, has not received much recognition as such.

[23]See Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law, (1929) 29 Col. L. Rev. 1.

[24](C.C. Va. 1811) 1 Brock. 203, 4 Hughes 606, Fed. Cas. No. 8411.

[25]Little v. Chicago, St. P. & M. Ry. Co., (1896) 65 Minn. 48; see also Mr. Foster's article, The Place of Trial in Civil Actions, (1930) 43 Harv. L. Rev. 1217.

[26]See: Weaver v. Ala. Great So. R. Co., (1917) 200 Ala. 432, 76 So. 364 and Culp v. Butler, (1919) 67 Ind. App. 668, 122 N. E. 684.

[27]See: Nichols & Shepard Co. v. Wheeler, (1912) 150 Ky. 169, 150 S. W. 33; Union Pacific R. Co. v. Rule, (1923) 155 Minn. 302, 193 N. W. 161; Hovel v. Minn. & St. L. Ry. Co., (1926) 165 Minn. 449, 206 N. W. 710 and Kepner v. Ceveland, C. C. & St. L. Ry. Co., (1929) 322 Mo. 299, 15 S. W. (2d) 825.

[28]See article by Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law, (1929) 29 Col. L. Rev. 1; also note (1930) 15 MINNESOTA LAW REVIEW 83.

The final method is that of constitutional limitation. Under this there is the due process clause and more recently the commerce clause. But the most that the due process clause can do toward controlling the place of trial is to "exclude jurisdiction over actions which it is manifestly unreasonable to try within the state."[29] The present discussion concerns the commerce clause. The commerce clause restricts the power of the state. It cannot exclude the corporation from doing interstate business; it cannot impose unreasonable burdens on that business, and whether or not that burden is unreasonable when the foreign corporation is subjected to suit on a foreign cause of action is the present problem. If in certain cases it is decided to be an unreasonable burden and the case dismissed for that reason, then the commerce clause is being used as a method of controlling the place of trial in civil actions. The same result could be reached by the doctrine of "forum non conveniens," but the commerce clause is a constitutional limitation so that it can be used when a state repudiates such a doctrine, or fails to exercise its discretion. Thus the commerce clause in this connection becomes a limitation on the power of the state to control the place of trial in civil actions and thus in itself is a method of control. If it is assumed that such a method is proper, the only remaining problem is to determine the extent to which it is applicable. The fore part of this discussion has shown the cases in which it has or has not been employed and the extent to which these decisions lead. The latter portion is designed to determine what is an unreasonable burden in the light of the reasons advanced.

It is interesting to note that in the very first Supreme Court case on the subject, that of *Davis v. Farmers' Cooperative Co.*,[30] there was felt a very great and necessary need to control the place of trial in certain types of cases, and as a result the commerce clause was seized upon as a method of accomplishing this result. The note previously referred to appended to this case shows this need. It was felt that if suit were allowed on these 1,028 personal injury cases in which the interstate carriers stood to lose some $26,000,000 the unreasonable burden of these cases placed on the carrier would so disrupt interstate commerce, owing to the fact that numerous witnesses would be required for each case and

[29]See Foster's article, The Place of Trial in Civil Actions, (1930) 43 Harv. L. Rev. 1217.

[30](1923) 262 U. S. 312, 43 Sup. Ct. 556, 67 L. Ed. 996.

legal proceedings must be carried on at a place remote from the place where the carriers had prepared for such legal proceedings, that the public would suffer. But on the other hand in the case of *Hoffman v. Missouri ex. Rel. Foraker*[31] even though witnesses were required from outside the state on this foreign cause of action and even though securing the presence of those witnesses would greatly inconvenience the carrier and cause it expense, probably as great as the inconvenience and expense in the *Davis Case,* the court held that there was no burden on interstate commerce merely because the defendant was incorporated and operated in the state of Missouri.

It would be interesting to know the result if the note appended to the *Davis Case* had been appended to the *Hoffman Case* instead. Certainly the reasoning of the *Davis Case* would be just as applicable to the *Hoffman Case* under such circumstances. The deciding factor in the two cases must be the fact that the defendant was incorporated in the state where suit was brought. How can this affect interstate commerce? Is it any more burdensome to defend a suit where the interstate carrier is not incorporated than where it is incorporated if the cause of action in both cases arose at a remote place? Certainly there may be some distinction as argued in the case of *Erving v. Chicago N. W. Ry. Co.,*[32] for, of course, where the defendant is incorporated it has certain connections with members of the legal profession which will render the course of the trial much smoother and the inconvenience to the corporation, as such, will be somewhat diminished, but the availability of the witnesses will not be affected, and the ultimate cost will not be greatly decreased.[33] Consequently, if one considers the question from the point of view of the detriment to the general public, as the reasoning in the *Davis Case* indicated, the result is highly confusing in the light of subsequent decisions.

The explanation of the *Hoffman Case,* however, probably lies in the fact that since the defendant was incorporated in Missouri the Supreme Court is hesitant in overturning the Missouri deci-

[31](1927) 274 U. S. 21, 47 Sup. Ct. 485, 71 L. Ed. 905.

[32](1927) 171 Minn. 87, 214 N. W. 12.

[33]Suppose the corporation had been merely incorporated in the state and was doing no business there excepting the keeping of the records necessary to comply with the state statute. Would the burden be any less than in the case where the corporation was foreign and not doing business? If such a requirement is a burden on interstate commerce and so unconstitutional, would not the state be requiring an unconstitutional condition to incorporation in the state?

sion. The matter of a domestic corporation has always been taken care of by the state. On the other hand, it has not always been so clear that a state could deal with a foreign corporation. In fact, there was a time when doubt was expressed as to whether a personal judgment could be obtained against a foreign corporation under any circumstances.[34] Traditionally, however, the corporation could be sued where the defendant was incorporated. In spite of the fact that there is some burden upon interstate commerce in the *Hoffman Case,* that burden may not be unreasonable.

If the court dismissed the case, the plaintiff would be forced to sue elsewhere. The only place where this would be possible under the decisions of the Supreme Court would be in Kansas. Of course, since in this case the plaintiff was a resident of Kansas, it might not have been placing too great a burden upon him to require him to sue in Kansas, and if the witnesses were employed exclusively in Kansas the fact that the suit is brought in Missouri would place a burden, perhaps unreasonable, upon interstate commerce. But since the injury in this case occurred during interstate business,[35] the probability is that the witnesses are also engaged in interstate business and may come from various parts of the country, so that even if the suit were brought in Kansas the availability of the witnesses would not be affected and whatever burden there would be upon interstate commerce would be the same as if the suit were brought in Missouri. In fact, since it is probable that the defendant maintains a legal staff where it is incorporated, the probabilities are that it would be even less of a burden.

Such reasoning, however, is rather precarious, and undoubtedly the fact that the corporation has been considered historically as a creature of the state of its incorporation played a more important part in the decision of the *Hoffman Case.* The case is not a matter of keeping a foreign corporation out of the state, but rather of what a state may do with a corporation which is actually incorporated in that state. There is no requirement that the de-

[34]See Part I of this discussion in (1933) 17 MINNESOTA LAW REVIEW 270.

[35]The employers' liability act does not apply unless the injury occurred during interstate business. As to employer see: Shanks v. Delaware, etc., R. Co., (1916) 239 U. S. 556, 36 Sup. Ct. 188, 60 L. Ed. 436, L. R. A. 1916C 797. As to employee see: Illinois Cent. R. R. Co. v. Behrens, (1914) 233 U. S. 473, 34 Sup. Ct. 646, 58 L. Ed. 1051, Ann. Cas. 1914C 163. Also see 45 U. S. C. A., sec. 51, pages 120 and 124; (1928) 12 MINNESOTA LAW REVIEW 492, 499.

fendant be incorporated in that state, even though it is engaged in interstate commerce. It is not a foreign corporation, and the question is not one of admission upon condition, constitutional or unconstitutional. If the defendant does not like the actions of the state of Missouri, it need not be incorporated there. It can still engage in interstate commerce and be incorporated in another state. Consequently, the matter is somewhat in the control of the defendant, and it should not be heard to complain if subjected to suit where incorporated. Furthermore, the fact that states are somewhat in competition for the business brought by the incorporation of corporations will greatly temper any tendency upon the part of the state to be exorbitant or unreasonable in its desires.

Connected with this problem is the question as to whether the doctrine of denying jurisdiction as being a burden upon interstate commerce will be extended to natural persons engaged in interstate commerce and corporations other than carriers. It has been suggested[36] that the same principles are applicable; that the burden and consequent detriment to the public are not confined to carriers, and there seems to be no reason why the principle should not apply to all engaged in interstate commerce whether carriers or not, and whether corporations or not. The *Hoffman Case* is at least suggestive upon this point, and indicates that perhaps the doctrine may extend only to foreign corporations engaged in interstate commerce. However, since the present discussion concerns foreign corporations only, and since there is no doubt that the principle extends at least that far, the solution to the question suggested is not attempted.

It is not the purpose here to attempt to rationalize the methods of judging nor to attempt to choose the correct one to be applied to this particular case.[37] Nevertheless, it is interesting to note that the same method is used in both the *Davis* and the *Hoffman* cases, as is indicated by the fact that the opinion in each is by the same judge. If it is to be admitted that the decision in each of these two cases is the correct one, the explanation must go further back than the reasoning of detriment to the general public, and it must be recognized that the commerce clause is merely a device and not an explanation. It must be realized that the decisions are a compromise between balancing the inconvenience to the corporation engaged in interstate commerce and the fact that according

[36]See note in (1928) 42 Harv. L. Rev. 131.
[37]Cardozo, The Growth of the Law 63.

to our previous concept (whether right or wrong being immaterial) suit could be brought on a transitory cause of action wherever the defendant could be "found." Perhaps it is the conflict between the "method of tradition" and the "method of sociology," and until the stage of synthesis is reached complete understanding is not possible.[38]

Another possible solution to the problem is to conclude that the commerce clause is not applicable to this situation and recognize a sort of doctrine of "forum non conveniens," which Mr. Blair argues convincingly is already present in our consideration of such cases.[39] This solution, however, would mean the reversal of the present line of reasoning, which is already established. This would be rather difficult, no matter how ideal.

Consequently, we shall proceed upon the assumption that the commerce clause is an adequate and legitimate method of controlling the place of trial in this particular type of case.

It has been shown how it might be assumed that the residence of the plaintiff is not controlling in this particular question, but only by analogy and on the assumption that the cases were decided correctly. But this is not sufficient, and it remains to reconcile or disprove these holdings. This, of course, necessitates a consideration of each of the three factors previously noted.

In the first place the present concern is with those cases which involve some burden. This will eliminate those cases in which the cause of action arose in the state where suit is being brought. The question is essentially one of when to deny jurisdiction when the cause of action is foreign. Thus situations 2, 4, 6 and 8 can be eliminated as being no burden. The other situations, namely, 1, 3, 5, and 7 represent cases in which there is some burden, and it remains to be seen when that burden is or is not unreasonable. For as pointed out in the case of *Erving v. Chicago N. W. R. Co.*[40]

"It is only unreasonable burdens that are intolerable. Commerce, like every person and industry must carry burdens."

It will be noted that in most cases the defendant was merely soliciting business in the state. Since such solicitation does not

[38]Cardozo, The Growth of the Law 62.

[39]In Mr. Blair's The Doctrine of Forum non Conveniens in Anglo-American Law, (1929) 29 Col. L. Rev. 1, 2, it is said, "While the doctrine has but rarely been referred to by name in American cases, yet decisions showing applications of it are numerous; and it is so far from being a foreign doctrine that in one of the leading English cases on the subject, recourse was had to a decision in this state as an enlightening precedent."

[40](1927) 171 Minn. 87, 214 N. W. 12.

constitute the doing of business in the state,[41] the question is, even though it is unreasonable to assume jurisdiction in these cases when the defendant is merely soliciting, or not doing business, is it also unreasonable to assume such jurisdiction when the foreign corporation is doing business in the state?

The reasoning in the *Davis Case* is directed primarily at pointing out the burden, i. e., that the cause of action arose at a place remote from the place of trial. Quoting again from that case:

"That the claims against interstate carriers for personal injuries and for loss and damage of freight are numerous; and that the amounts demanded are large; that in many cases carriers deem it imperative or advisable to leave the determination of their liability to the courts; that litigation in states and jurisdictions remote from that in which the cause of action arose entails absence of employes from their customary occupations; and that this impairs efficiency in operation, and causes directly and indirectly heavy expense to the carriers . . . these are matters of common knowledge."

Upon this reasoning it would seem that whenever the cause of action was foreign there would be an unreasonable burden on interstate commerce, since it might be argued that there would be almost as great an inconvenience and cost to bring witnesses to the trial when the defendant was operating in the state as when it was not. This argument is apparently answered by the court in the case of *Erving v. Chicago N. W. R. Co.*[42]

"We assume that a railroad company is well equipped to properly protect itself in litigation throughout its entire system, and so long as it is not required to go beyond its own tracks or rolling stock, to defend in such actions, it should be held that such suits are not an undue burden to commerce."

Whether or not this argument completely answers the reasoning in the *Davis Case* is of course problematical. It may be noted that the Minnesota court is inclined to assume jurisdiction upon this distinction,[43] but it has been suggested that this is not consistent with the reasoning in the *Davis Case*.[44]

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[41]See previous article, Jurisdiction Over Foreign Corporations in (1933) 17 MINNESOTA LAW REVIEW 270.

This is not to be confused with the requirement that a foreign corporation be doing business in a state before a personal judgment is obtained. This latter is a matter of due process and the fourteenth amendment. In the present case the concern is not necessarily with a personal judgment since the burden may be the same whether or not a personal judgment is sought.

[42](1927) 171 Minn. 87, 214 N. W. 12.

[43]See Erving v. Chicago N. W. Ry. Co., (1927) 171 Minn. 87, 214 N. W. 12 and cases cited in note (1929) 13 MINNESOTA LAW REVIEW 485, 491.

[44]Quoting from the discussion in note (1929) 13 MINNESOTA LAW REVIEW 485, 491, "There is at least a permissible inference that the rule of

Without attempting to determine as yet whether or not the Minnesota court's view of this question is correct, let us turn to a consideration of the factor of the residence of the plaintiff.

The burden which is alleged to be present in the different situations is the difficulty, inconvenience, and expense placed on the defendant who is engaged in interstate commerce, and it may be argued: But will it be a greater inconvenience or more expensive to the defendant when the plaintiff is a non-resident? Of course, the residence of the plaintiff does not make the suit any harder to defend. The question is not necessarily, does the fact make the existing burden any more of a burden, but rather does it make the existing burden an unreasonable one; and in view of the fact that the first use of the commerce clause in this connection was primarily to prevent "imported" suits,[45] it might well be said that non-residence on the part of the plaintiff does help to make the burden unreasonable, due to the fact that such "wholesale importation" of suits is possible, thereby exposing the foreign corporation engaged in interstate commerce to an unreasonable burden.

Further argument, as pointed out in the case of *Erving v. Chicago N. W. Ry. Co.*[46] is that:

"Article 4, section 2 of the United States constitution, will not permit the legislature to say to non-resident plaintiffs, 'Our courts are open only to our residents to recover for personal injuries arising out of accidents in other states'."

The only answer to this, of course, is that, even if true, the Constitution also prevents the states from authorizing such suits if the result is a burden on interstate commerce, so that such a statement as made by the court is merely begging the question. Further, it is not the legislature of the state which is the authority on when the courts are open under the interstate commerce clause of the United States Constitution, but rather the United States Supreme Court.

Thus it might well be said that though the burden may exist

these cases is intended to apply and that it is an undue burden upon interstate commerce for the courts of a state to take jurisdiction of a foreign cause of action even though the carrier is otherwise within the jurisdiction of the state" and "so far as appears in any way from the opinion in the Davis Case there is nothing to prevent the doctrine announced in that case from being equally applicable whether or not the carrier is doing business in the state."

[45]See note appended to the case of Davis v. Farmers' Cooperative Equity Co., (1923) 262 U. S. 312, 43 Sup. Ct. 556, 67 L. Ed. 996.

[46](1927) 171 Minn. 87, 214 N. W. 12.

the unreasonableness of that burden may depend in part upon the factor of the residence or non-residence of the plaintiff.

The problem is one of weighing the inconvenience to the plaintiff and the inconvenience to interstate commerce. The Massachusetts court in the recent case of *Cressey v. Erie Ry. Co.*[47] decides that,

"On principle we think that the right and convenience of the plaintiff to maintain the action in the courts of his domicil outweigh the inconvenience to interstate commerce which may result from the presentation of its defense in the courts of this commonwealth by the defendant."[48]

Here again we have the conflict between the traditional right of the plaintiff and the newer application of the commerce clause to restrict this right. Here again who can say which should carry the most weight? However, when the two factors of non-residence of the plaintiff and the fact that the defendant is not doing business in the state occur together, the Supreme Court is of the opinion that the burden of a suit on a foreign cause of action is unreasonable.[49] And it would seem logical that when these two factors, a non-resident plaintiff and the non-doing of business by the defendant, are not present, that is when the plaintiff is a resident and the defendant is operating or doing business in the state, that the suit on a foreign cause of action should not unreasonably burden interstate commerce.

This narrows the problem down to the questions presented in situations No. 1 and No. 7, where the only factor occurring within the state is, in the former case the doing of business by the defendant and in the latter case the residence of the plaintiff. It would seem that in these apparently doubtful cases the reasonable solution would be to examine the facts in each particular case with a view to determining just how much of a burden exists. For example, in situation No. 1 it might be said: since here we have an imported suit, the presumption is that the suit should be dismissed

[47](1932) 278 Mass. 284. 180 N. E. 160.

The court sums up the problem by saying, "The problem is to balance the interests of individuals in enforcement of private rights on the one side, against the interests of the public as a whole in untrammeled and efficient interstate transportation on the other side." The opinion is very well written and shows an unusual perception of the problem as many other cases do not.

[48]But see: Thurman v. Chicago, M. & St. P. Ry. Co., (1926) 254 Mass. 569, 151 N. E. 63, 46 A. L. R. 563 and note, which seems to indicate a contrary holding.

[49]Davis v. Farmers' Cooperative Equity Co., (1932) 262 U. S. 312, 43 Sup. Ct. 556, 67 L. Ed. 996.

as being a burden on interstate commerce; but if the plaintiff can show that the witnesses are just as available, and that there would be no greater burden where he is bringing suit than there would be if the suit were brought where the cause of action arose, then the suit will not be dismissed as being a burden upon interstate commerce.

Of course, the objection to this principle is that it tends to raise collateral issues, which in most cases is unwise; but in this particular case it is suggested that it is a solution to the problem. Otherwise the burden upon interstate commerce may be considerable. Thus if it is taken to be a set principle that case No. 1 is not to be dismissed, as in the case of *Erving v. Chicago N. W. Ry. Co.*[50] the fact remains that in some cases considerable burden is placed upon interstate commerce and that burden is just as unreasonable as in other cases. Thus, suppose an injury occurred in Oregon and the plaintiff was suing in Illinois; and all the witnesses to the injury were operators in Oregon. Certainly it will be a considerable burden upon interstate commerce to bring all those witnesses to Illinois for the length of the trial. On the other hand, the plaintiff is not a resident of Illinois, and consequently is not put to any great inconvenience if he is required to bring his action in a jurisdiction where the burden will not be so unreasonable. In such a situation the general rule will apply. But suppose the injury occurred in Wisconsin and the suit was brought in Illinois, and it appeared that all the witnesses were engaged in interstate traffic, being in Illinois part of the time and in Wisconsin part of the time, and that the witnesses would be just as available in Illinois as in Wisconsin. The plaintiff is not a resident of either state so that the matter is of little concern to him except from a personal point of view. Thus he may prefer Illinois laws of procedure, or he may already be represented by counsel in Illinois, or he may have relatives with whom he could stay during the progress of the trial, or any number of reasons which are immaterial to the question of burden on interstate commerce. In such a case the burden would be exactly the same, and since the plaintiff traditionally has control over the place of trial, subject to certain limitations for the protection of the defendant, none of which is present in this particular case, the suit, if brought in Illinois under such circumstances, should not be dismissed as being an unreasonable burden upon interstate commerce, since that burden is not unreasonable.

[50] (1927) 171 Minn. 87, 214 N. W. 12.

Thus it is suggested that the solution to situation No. 1 will operate as follows: The plaintiff will file his declaration or petition alleging the injury and other facts necessary for his cause of action; the defendant will object by way of motion or plea in the nature of a plea in abatement, under which the question as to the existence of the unreasonable burden can be gone into by affidavit or if the court wishes by taking testimony. This method has much to commend itself, inasmuch as the question as to whether the suit is a burden on interstate commerce depends primarily upon the availability of the witnesses, which factor may vary in different cases, and it places the court in a position where it may recognize such factors in the weighing of the inconvenience to the individual against the inconvenience to interstate commerce.[51]

A similar principle might apply to situation No. 7. Here if it were not for the fact of the residence of the plaintiff, there would be no doubt that such a suit would be a burden upon interstate commerce according to the theory of the Supreme Court, but can it be said that this fact alone changes the unreasonableness of the burden? As previously pointed out the courts are not in harmony upon this point, and there is no reason why they should be when they attempt a decision upon the basis of an abstract theory of

[51]It should be noted, however, that in the case of Denver and R. G. W. Ry. Co. v. Terte, (1932) 284 U. S. 284, 52 Sup. Ct. 152, 76 L. Ed. 295 the court expressly repudiated the use of such a method in general by stating: "Courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the state and retain or refuse jurisdiction according to the relative inconvenience to the parties." What other factors operate to make the unreasonable burden upon interstate commerce and how the fact of availability of witnesses can otherwise be determined the court does not mention.

On the other hand, in the Massachusetts case of Cressey v. Erie Ry. Co., (1932) 278 Mass. 284, 180 N. E. 160, the defendant brought out these factors in a manner similar to that above suggested. In this case the defendant appeared specially and filed a motion setting forth the facts that "to try the case in this commonwealth would necessarily entail the absence from their duties of employees of the defendant and of connecting carriers for prolonged periods, whereas, if the case were tried in the jurisdiction where the cause of action arose or where the defendant has a usual place of business, it would be no hardship on the defendant, nor interfere with the efficiency and operation of its railroad." The court apparently considered these factors in arriving at its conclusion that the factors "do not on this record appear to be excessive, or unusual, or unduly burdensome. They do not seem to us of such nature as to overcome or render inapplicable the general rule that one has a right to enforce his cause of action in the courts of his domicil to the extent that he is able to obtain jurisdiction over the property of his adversary."

Whether or not this conclusion is correct is immaterial at this point, but the reasoning of the court suggests that the plan indicated in the text or a variation thereof is either consciously or unconsciously being employed.

reasonableness or unreasonableness without having before them the factors which go to make up that reasonableness or unreasonableness. It would seem that these facts are necessary to determine just how much of a burden upon interstate commerce the particular suit in question will occasion. How much inconvenience is the defendant going to be put to to defend this particular case in this particular jurisdiction? Not how much burden might there generally be in such a situation. Where are the witnesses? Are they engaged in interstate commerce? To what expense will the defendant be put as compared with the expense and inconvenience of the plaintiff in being denied his own courts? It would seem that these are questions which should ultimately decide these doubtful cases.

Yet as pointed out, the courts are not inclined to go into these matters, and as long as they are not so inclined courts will vary in their views as to which is the more important, the burden upon interstate commerce, or the right of the plaintiff, and especially a resident plaintiff, to control the place of trial. No doubt there is a burden on interstate commerce in any suit upon a foreign cause of action, but the arguments that the residence of the plaintiff or the doing of business by the defendant reduces this burden until it is not unreasonable are unanswerable since they are predicated upon a different philosophy. Thus unless a course of action is taken which will mediate these conflicting philosophies, such as that suggested, confusion will reign until the United States Supreme Court settles the matter by making a choice between the two legal theories.

As previously noted the cases of *Michigan Central R. R. Co. v. Mix*[52] and *Denver and R. G. W. R. Co. v. Terte*[53] present situations varying from the eight principal situations just discussed. In these cases the plaintiff became a resident after the cause of action arose. This variation is naturally limited to situations Nos. 1 and 3 according to the previous classification. Situation number 3 was previously decided to be a burden upon interstate commerce, and the question presented is whether or not the fact that the plaintiff became a resident after the cause of action accrued should change this decision. Both the *Mix Case* and the *Terte Case* deny any change in the situation and say there continues to be a burden upon interstate commerce. In view of our previous reasoning this

[52](1929) 278 U. S. 492, 49 Sup. Ct. 207, 73 L. Ed. 470.
[53](1932) 284 U. S. 284, 52 Sup. Ct. 152, 76 L. Ed. 295.

is probably correct, since even the fact the plaintiff had always been a resident rendered the reasonableness of the situation somewhat doubtful.[54] Consequently, the fact that the plaintiff became a resident after the cause of action accrued would render that reasonableness even more doubtful, and in view of the fact that all other matters concerning the case are foreign the burden upon interstate commerce carries more weight than any real or fancied right of the plaintiff to control the place of trial by taking up residence even in good faith in another state.

The same variation applied to situation No. 1 presents a more difficult problem. The decision will be somewhere between the conclusion with respect to situation No. 1 and that reached in situation No. 5, as the only difference between the two is that in the former the plaintiff is a non-resident and in the latter is a resident, while in the variation the plaintiff acquired residence after the cause of action arose. Since situation No. 5 was decided not to present an unreasonable burden and situation No. 1 was classified as one of the doubtful class, the question is whether the addition of this factor presented by the variation will convert the case into one like situation No. 5 or will leave it with No. 1 among the doubtful cases, to be decided upon the facts which go to make up the unreasonableness or reasonableness.

In view of the fact that the only factor which prevents this situation from being reasonable is one of time, which can have little conceivable bearing upon interstate commerce and its burdens, it would seem that the principle of the right and convenience of the plaintiff outweighs the inconvenience and burden to interstate commerce and that this variation should be classified along with situation No. 5, i. e. no unreasonable burden. This conclusion is open to the objection, however, that the plaintiff could defeat this control of the place of trial in civil actions by merely changing his domicil or residence. This would necessitate a determination by the court whether or not the change of residence was bona fide. This is too great a burden to place upon the courts. It varies from the other factors which it was previously suggested that the courts determine, in that it has no bearing upon the burden which interstate commerce will be made to bear.[55] The fact that the

[54]See discussion with reference to situation No. 7 supra.

[55]See note (1929) 13 MINNESOTA LAW REVIEW 485, 490. In discussing the problems as to when residence is in good faith established the author says: "It would seem that the burden would be equally great."

plaintiff removed to the state in good faith or for the express purpose of bringing suit in no way reduces or extends the burden placed upon interstate commerce. Consequently, it is suggested that this situation be classified along with situation No. 1 and that the courts be allowed to determine just how much of a burden exists in each individual case.

Summarizing: Situation 2, 4, 6, and 8 do not constitute a burden, since the cause of action is not foreign. Number 5 is not a burden since the plaintiff is a resident and the defendant is operating in the state, thus outweighing the inconvenience to interstate commerce. Situation No. 3 constitutes a burden since all the factors are foreign to the forum. These factors are not changed by the acquiring of residence on the part of the plaintiff after the cause of action accrues. Situation No. 1, and number 7, along with the situation in which the residence of the plaintiff is acquired after the cause of action accrued when the defendant is operating in the state, however, present doubtful cases which cannot and should not be decided with reference to a general philosophy but should be decided by weighing the particular burden in the particular case. This necessitates a different approach and the going into by the court of the factors which go to increase or decrease this burden. With this synthesizing the commerce clause may be used as a fitting control of the place of trial in such civil actions.